impenetrable is not matter in itself, but matter in its particular and fragmentary existence, i.e. bodies. And, consequently, we must hold that bodies are penetrable and impenetrable: penetrable inasmuch as they possess a common nature and substance, impenetrable inasmuch as they are distinct and separate parts of this same substance. Finally, *extent* and *impenetrability*, as well as all properties and modes of matter, are general and essential properties, and consequently, like matter itself, merely intelligible elements; they possess, in other words, like matter, a principle, a type, an idea.

LECTURES ON THE PHILOSOPHY OF LAW.*

By James Hutchison Stirling.

IV.

Gentlemen:—The last subject of consideration with us was the alienation of property through long omission of the manifestation of will in it. There the omission was indirect, and the step from indirect to direct omission constitutes the transition from the subject of the use of property to that of its alienation proper. A thing is mine when it is willed mine, and not mine, consequently, when it is willed not mine; or, from that into which I have set my will, I can also withdraw it again. This is alienation which may be an act direct, explicit, and declared, as well as one indirect, implicit, and undeclared. What is alienable, however, must be by very nature *external;* whereas what is by very nature *internal*, is also by the very terms inalienable. I cannot *outer* what is wholly and solely *inner*. Now, such is my personality as personality; such my free-will, my moral sense, my religious conviction. These I cannot commit to the disposal of another; for they are my very inmost being, my very principle of existence, my very self; and the nature of one's absolute self is free-will, and that is freedom, liberty. I can neither *be* a slave, then, nor *have* a slave. All compulsion is unlawful *but that of law itself*, which, properly considered, is no com-

* Delivered before the Juridical Society, Edinburgh, Nov. 16, 1871.

pulsion; for it is the restoration of right, of free-will, not only to him who has been compelled, but to him who has been the compeller. Or, to put it otherwise, no man can be *compelled* but to *undo* his *compulsion*, which evidently is the restoration of his own right. He who gives into the possession of another his capability of rights, his moral and religious principles, gives away what he does not possess. Let him once possess them, let him once take his own free-will into possession, and such alienation is impossible. Retrocession from an immoral covenant, then, is no wrong; for the right that might be said to be wronged, as regards either contracting party, no matter which, never could have been his. The inviolable inner of my being is no externality, and once I have taken it into my possession as such, every externality is powerless against it. Nevertheless, a part is, as in relation to the whole, external; and I may alienate to another the *temporary* and *partial* use of my inner abilities. Were such alienation not partial, but complete, then I were again a slave. This question of partial alienation of what is in its nature inward leads Hegel to speak of right in reference to the various products of mind, and one remark here is this: "The merely negative, but indispensably *first*, furtherance of the arts and sciences is to secure those who work in them from theft, and allow them the protection of their property, just as it was the indispensably first and the most important furtherance of trade and industry to procure them safety from robbery on the roads." Hegel naturally, also, considers here the question of *self*-alienation, of the alienation of one's life, of suicide. The complete totality of our external activity, life, is not, to the personality which it naturally constitutes, an outer thing; it is not my right to seek death, then, unless at call of the ethical universal in which I am held, and which is my substance. "Suicide," says Hegel, "may be possibly thought bravery, but it is the false bravery of tailors and girls." Still he seems a little *soft* to the suicides of *the heroes*. "When Hercules burns himself," he says, "when Brutus falls on his sword, that is the bearing of the hero to his own personality; but when the question is of the simple right of suicide, it must be denied to the heroes as well as to the rest." The prohibition here, however, hardly seems a strong one,

seeing that it appears to be admitted that there *is* an heroic bearing to which personal life *is* an externality.

Property as external is in connection with other things external which are also properties; but the principle of property is will, and property to property is consequently will to will. This relation of will to will is the true and proper element in which free-will has existence; and property, no longer through subjective will and an external object, but property through a common will, through the will of another —this is the sphere of Contract. And, perhaps, there is that in this transition which will reveal to you at last how the triplet Property, Contract, and Penalty, is conditioned by the moments of the Notion. In property, for example, the relation is that of a *single* will, in contract that of *several* wills, and in penalty that of the common or *universal* will. Very plainly, then, there is here but the ordinary succession of the moments, singular, particular, and universal; and I may remark in this connection, that Hegel does not tie himself down to the universal being always first, but allows it freely to exchange places with the singular.

The main moments with Hegel in his treatment of contract are the act of will which constitutes it—from the very notion, and that the realization is a simple consequence of this act, and necessarily contained or implied in it. "My promise in the case of a contract," he says, "implies that I, with my own will, have excluded something from the sphere of what is *mine*, and, at the same time, that I have acknowledged that the other person has received it into the sphere of what is *his*. The thing, then, by virtue of the contract, is already the property of the other, inasmuch as that a thing is mine so far as it depends on me, has its ground in my will. In so far, then, as I should not render to the other the matter of the contract, or fail to put him in possession of it, I should be infringing *his* property. The contract itself binds me to its realization."

There is that in the relation of the mutual wills present in contract which is peculiarly interesting to Hegel. He sees in it all the features of the notion, and so, as he is fain to believe, its sanction also. He finds property an affair of *wills* now, and no longer to depend for manifestation on an *exter-*

nal object. Contract, he says, is "the process in which there is exhibited and resolved the contradiction that I *am* and *remain* independent proprietor, excludent of the other will, so far as, in a will identical with the other will, I *cease* to be a proprietor." I not only *can*, but *must*, alienate property; for it lies in its very notion that will should be made objective, external. But if it is external it is *another* — that is, another will, as it were; and so we have the unity of *different* wills—a unity in which this difference is at once negated and affirmed. This, however, is the very movement of the notion — the identification of differences, the differentiating of identity—and signifies the production of an identical will in the absolute difference of independent proprietors, in which each, with his own will and with the will of the other, *ceases* to be a proprietor, *remains* a proprietor, and *becomes* a proprietor. It follows, then, that each issues from contract the same proprietor that he entered into it, or that there is virtually between them an *identical* property; this is the *value* in which the articles of the contract are, with all their specific external differences, equal to each other. So it is, says Hegel, that a *læsio enormis* cancels the obligation of a contract. It is in this neighborhood also that Hegel censures the unilateral and bilateral and other divisions of contract in Roman law, accusing them of superficiality and confusion.

Possession stands to property as in a relation of substantiality to externality. Property, namely, is an assertion of will, of which possession is the internal reality. This same relation but repeats itself in contract in its two terms of agreement and fulfilment (*præstatio*, *solutio*). The agreement is wholly substantial, it is in the element of ideality; and the utterance of ideality—expression—is the sign. So the agreement brings itself through the *stipulation*, in the symbolical formalities of gestures or of speech (which last is the fittest expression of ideality), into a sign. The stipulation, therefore, gives an outer body to the ideality of the agreement. Formalities, doubtless, get simpler and simpler; still, for the conversion of subjectivity into objectivity, an externality is necessary, and formalities of some kind will remain *as* necessary for the expression of will, as speech generally for the expression of thought — it lying in these

very words that the expression of will will reduce itself more and more to the expression of thought as such. The formalities of contract, then, are not there only to bring a fee to officials, but that the mobile inwardness of will may be stereotyped in an outward and undeniable form. It is impossible to gainsay the value, in all cases, *of the external proof:* a thousand witnesses to the contents of a letter are really impotent beside production of the letter itself. Where agreement and prestation are not simultaneous, then the stipulation must be regarded as a real essential. What is *implicitly meant* must be *explicitly set.* The derivation of the word *stipulation*, as an outer expression to an inward will, does not seem quite certain. Kant derives it from *stipula:* the contracting parties broke a straw between them. Dr. D. C. Heron, again, has it that "whatever was firm was termed a *stipulum* by the ancients: probably from *stipes*, the trunk of a tree." * The stipulation is the guarantee, then, that something does not lie only *in* the will, but actually is willed, and so lies *out* of will — a fact. The stipulation further, then, must be regarded as what in contract is legally *substantial*, or in the stipulation the transfer of property must be regarded as virtually accomplished. This is the declaration of the notion; but of course, between the stipulation and the prestation there is allowed the usual latitude of *understanding;* understanding has always the fact of the equal *value*—in regard to what is given and what is taken—as basis and standard. Stipulation, moreover, as *substantial*, only applies to what is *substantial*—value. A contract is not a mere promise; and the stipulation gives shape and fixture to the difference. Fichte and others are quite wrong, then, in assuming the obligation in contract only to begin with the beginning of the prestation. Contract is an affair of legal, not of moral right, and has nothing to do with the secret intentions, the state of mind morally, of either side. Duplicity of moral meaning is not allowable in contract, and

* Nevertheless, in the libris "Originum seu Etymologiarum" of Isidorus Hispalensis we find it said (iv. 24): "Stipulatio a stipula—veteres enim quando sibi aliquid promittebant, stipulam tenentes *frangebant*," which would seem to be dead against Dr. Heron, who, for the rest, supports his own statement by no authority.

the stipulation is the embodied and undeniable guarantee of that. Prestation is but the inevitable result of stipulation, and that there are contracts—loans, deposits, &c.—in which agreement and prestation are simultaneous is no proof to the contrary.

As regards the classification of contracts Hegel differs but little from Kant, and as it may be readily found by reference I shall not spend time in its exposition.

Hegel points out that in contract will is not will *as such*, not *absolute* will, but, as limited to, included in, an outer object—so to speak, transformed to it—is only formal will, individual will, self-will. That is, in contract the will is but natural will, the object but a natural object, and there is no necessity of reason between them: the will *may* express itself in the object, but it may also withdraw itself again. In contract, then, the wills are self-wills, natural, individual wills; the one will that results is only one of community, and not of substantial universality; and the object, as at all alienable by self-will, is only an individual external object. Neither the State nor marriage, therefore, are matters of contract. The State, for its part, is very evidently our natural absolute: we can neither enter it nor leave it by will of our own: it is no result, consequently, of any artificial reciprocal agreement; it is a natural growth, but a growth from reason; it is a realization in time of objective reason, of the rational will. The State is a single national spirit, and it is that spirit which is the substantial contents of every individual subject. These subjects are indebted to it then, and not it, in the first place, to them. The preservation of the State, consequently, is infinitely more than the preservation of the individual, and it is the latter's duty to perceive and acknowledge this. As regards marriage, there is a wonderful superiority in the teaching of Hegel to that of Kant. In fact, the sort of good old-maiden Kant is almost even disgusting here, and Hegel has a perfect right to speak of him as having exhibited the subsumption of marriage under the notion of contract in its "*Schändlichkeit*"; that is, in its shamefulness, or scandalously. Marriage to Kant, namely, is, in so many words, a contracted interchange of the use of the sexual organs, and his whole exposition in connection with it teems with offen-

sive expressions. It is only that old-maidenness of Kant, perhaps, that can supply any excuse for him. He has lived all his life, namely, at such a distance from the kindly mysteries of Hymen, that when he gets a chance in philosophy to approach them he cannot help extending a half-weak, half-wicked hand to the drapery. Hegel exhibits here an admirable contrast to Kant. To him the origin of marriage is ethical. The individual does indeed seek for himself the substantial existence of his own *natural* universal, the *genus*, the family, but the relation of sex in it takes on intellectual quality in a union of love and the spirit of trust. Sentiment, then—feeling—is still the element in which the family lives, and its rights and duties are moral or ethical rather than legal; for the individual constituents of the family are members of its *one unity*, of its *one personality*, rather than themselves persons, and the legal side is consequently subordinate to the moral. In this way Hegel deduces the necessity of monogamy, and presents the bodily union as rather a result of the ethical one. It is very true that we have all been much interested in certain views in regard to capture in marriage and other facts in its reference of an historical character, but the evolution in time neither dictates the evolution of the notion, nor renders it untrue. So far as time is concerned, religion may have begun in plant-worship, or brute-worship, or star-worship, or whatever worship you please; but, for all that, religion is a principle of reason, and has its own evolution of reason. The evolution in time *generally* is but—if we are to believe Hegel—the evolution of the notion *in representation*, as it were. As such external representation, history, then, is but necessarily a scene of contingency, which contingency gives to the evolution a scattered, partial, miscellaneous look—even a look of caricature; still, nevertheless, the evolution of the notion is but the evolution in time, stripped of its contingency. To arrange law, morals, and politics, according to the notion, therefore, is not really to fall into contradiction with the phenomena of history how motely soever.

Contract, as we have seen, then, is an agreement on the part of two wills—an agreement to a certain performance on the part of each. Now there are certain possibilities in this

relation. The one term may have mistaken the other; or expression may not have corresponded to inner intention on the part of either; or performance in the case of the one or the other may fail. Suppose, then, in the first place, a mistake. In this case there is a difference, but neither denies the right of the other: neither denies right as right; each on his own side only insists on *his* right. Nevertheless there is wrong here somewhere, though both are by supposition innocent in its regard. This, then, is the position of unintentional wrong, unintentional injustice, and the result is simply the civil suit, the action at law. The position is different, however, if we suppose expression in the case of either not to have corresponded with the state of his mind. Here the wrong, then, is no longer unintentional, but intentional; and the result is deception, fraud. But so the wrong is criminal: it amounts to a denial of right as right, at the same time that it acknowledges it in form.

But let us suppose, lastly, that there is intentional and express non-performance of the contract. In that case, the right of the other person is not only denied, but right as right is denied, and we have criminality in terms. *Logically*, as Hegel points out, in the unintentional wrong that gives rise to the civil suit, we have only a simple negative judgment; it is only denied in it that such and such particular is capable of subsumption under the genus, under the general rule; whereas, in the case of crime, it is the genus itself, the general rule itself, that is denied; and the judgment is of the kind that is called infinite. To say this rose is not red, is to deny a particular, but implicitly to admit a general; whereas to deny that fraud is crime, is to deny the genus itself, is to deny the person to be a person.

This, then, is the sort of external statement of the various positions, but how are they internally? how do they relate themselves to the notion? The notion here is that of will, particular personal will contracting with particular personal will under sanction and prescription of the universal will, of universal right. Now, the fact that it is particular will that is concerned, and in regard as well to a particular externality, some one article of property, introduces contingency, the possibility of accident. Neither will may deny the universal

will, and each may insist on its right as particular; but in its own contingency, one or other may err. Again, in the second instance, or in the case of fraud, universal will is formally maintained by both, but it is secretly denied by one of them. In the third case, lastly, universal right as right is denied, and the individual sets up his own will in its place. Now, it is from this last that the notion of punishment, penalty, evolves itself; and, believing the rest by implication intelligible, it is to this now that we shall confine our attention.

The criminal, then, has done two things: he has negated the universal will, and he has affirmed in place of it his own particular will. How is this disturbance of the true balance to be restored? To negate the universal will is to do something that is in itself null; and this null thing, to restore the affirmative, must be itself nullified. The criminal has resorted to force—a negation, and this negation can only be converted into the affirmative by being itself negated. The negation of the negation, like a double negative, effects position again, affirmation; and punishment is the true remedy. But, again, the criminal has set up his own particular will in place of the universal will; and as a free being he has, in so willing, willed what ought to be, or what ought to be supposed to be, universal. It is but justice, then, that the criminal be subsumed under his own law—force. Nay, as a free being, it is universal will he must acknowledge to be his own true will; therefore it is but the affirmation of his own true will that he must recognize in the negation of his own false particular will.

The first result, in mere *natural* circumstances, of the assertion of a mere *particular* will as law, is the counter-assertion, and with equal positiveness, so to speak even, with equal right, of the opposite particular—this is revenge. But this counter-assertion, as itself proceeding only from what is private and particular, is itself a new offence, and so there is initiated a progress, or, better, a regress *ad infinitum*, as we see in the *vendette* of the Corsicans or of the Arabians. This continuity of an endless repetition is interrupted now by the judge, who, as disinterested representative of Right *qua* Right, rounds the action back into itself through

retribution, and restores the universal will—the true will—that is, of the criminal himself. And we can readily see that the judge is the only proper administrator of any such function. His private feelings are not concerned—he is there for the universal only; whereas even the righteous man that would only revenge, that by retaliation would only restore the disturbed balance, acts, and can act, only under private feelings,—and probably under *the* private feeling that *his* wrong is wrong *as* wrong, and can only be atoned for by an utter negation—a negation that infinitely transcends the original negation of the criminal himself. The only *legal* compulsion, then, is the *legal* retaliation of the *illegal* compulsion. He who has forced or deforced the law, must be in turn forced or deforced, and that can be realized only where he is seizable, only in his person or property. Of course, the word force must be understood to have acquired a width of meaning here beyond its usual physical application: whatever is even *passively* illegal, as a negligence or even a mere omission, is, as infringement of the universal, capable of being regarded as force. In the same way it is allowable to view the sensuousness and mere nature of children as so much force which can be redressed only—raised into the universal of reason—by so much counter-force of training and restraint, discipline, and education. The natural will is to the rational will really in the relation of the particular to the universal, and the former must be negated into the latter. To the family as by law established, to the community as by law established, all untutored rude individualism of will or manner may be allowably said to stand as in a relation of force. Even suppose an entire society in a state of nature, that whole society may be convicted of force—force to its own universal, and the resultant *bellum omnium contra omnes* is but the necessary process for the discovery of the heroic will, which, instinctively universal, subjects the rest to itself. Mr. Grote would fain see this war of all against all brought back again; for he would have no standard for the individual but the individual. He is so much surprised, indeed, that any one should think otherwise that he cannot help referring him to what he calls "notorious facts"; and is thus absolutely blind to his own suicidal self-contradiction.

Not only are the "notorious facts" he affirms the universal standard he denies; but that he, an individual, and claiming to be amenable only to the individual, should express surprise at an individual simply for making good his own claim, this is the very *naïveté* of self-deception, the very *naïveté* of self-conviction, and the very *naïveté* of self-confutation. Only in the possibility of such confutation, indeed, is it that there is room for the very existence of the State. Were there no universal, were individualism all, then there were no State. It is the same possibility then, the same fact, that constitutes the very foundation and the origin and the reason of penalty. Many have found much difficulty in this. The Stoics, for example, in assuming only one virtue, necessarily implied also only one punishment, as realized in the laws of Draco, which made death the penalty of offences and crimes alike. Free-will is realized in a necessarily varied externality, however, and the infringements of it are subjected to a correspondent variety both as regards quality and quantity. Analogous variety of punishment, then, is but justice. It is gratifying to observe, however, that there is a decided tendency throughout all civilized communities to mitigate punishments, and all the more gratifying that this does not result from a laxer but from an exacter estimation of law and justice. It is because the *many* so correctly regard the law that we can afford to punish less the *few* who err. In this way we see that the character and amount of penalty does not depend altogether on the notion, but on the actual historical condition of the particular people. That is the circumstance that explains the apparent paradox: the more a people abhors crime, the less it punishes it. Such a people is secure in itself, and stands not in need of extraordinary examples. It is probably this circumstance that has led some to oppose the punishment of death, and others all punishments whatever. Beccaria, for example, even denies the State any right of capital punishment, and he assigns for reason that it is not to be presumed that the social contract contains the consent of individuals to their own death. But the State is not a contract; and, as the established universal, it possesses a right to claim the sacrifice of the individual for its interests. To others, again, it appears absurd because

of *one* evil to will *another*. Accordingly they either reject punishment altogether, or admit it only because of its tendency to intimidate, deter, prevent, &c. Such views, as Hegel points out, however, resemble the lifting of a stick to a dog: they do not really respect man, they do not really respect him as a free being, but treat him as a dangerous animal, that must be kept under. But punishment is an idea on its own account, and has its foundation in the very nature of the will, in the very nature of reason. The true, even to realize itself, must destroy the false: so the false will of the criminal must realize the true universal will, and it lies in the very notion of the relation that the false will should contradict itself, negate itself, and how can that be done but by submitting it to its own law? This is to be borne in mind as against all that moral sublime which encounters us but too frequently in medical books now-a-days. In these we find generally a thousand physiological reasons pleaded in proof that the criminal but obeyed his own necessity, but did what he could not do otherwise; and that the true punishment of the criminal is the rewarding of him by making him, through the infinite cares and privileges of public protection, a mere pampered pet, a sort of humanely and scientifically crammed animal! This is to pervert the very notion of will; this is to pervert the very notion of reason; this is to pervert the very notion of Nature herself; for Nature, when it is man that approaches her, is herself reason. No; let us return to health, let us abandon all these pillows and bolsters — all these feather-beds of sentimentality on which vice is to fall soft, and let us tell men that they must be men, and that when they declare their self-will the universal will, they must be subsumed under it and abide the consequences. For this there is provided the universal law— for this there is provided the judge, who dispassionately and disinterestedly knows the universal, and dispassionately and disinterestedly can subsume the wrong and the false under it. In the very criminal there lies the universal that is to do him justice. This universal, then, is his own; and in the very fact that it is his own, he has given his consent to its essential and necessary action even against himself. The universal will has a right to negate what would negate *it*,

and that very universal will is the criminal's own. The kind of punishment, then, depends on the particular crime and on the particular condition of society, and that is an affair of *understanding;* but punishment itself depends on the *notion*, depends on reason, and is an inevitable and rational result. "An act of justice cannot be degraded into any mere means: justice is not exercised in order that anything but itself be attained and realized. The fulfilment and self-manifestation of justice is an absolute end, an end unto its own self." It is precisely in punishment that the criminal himself is honored; and it is precisely by this that such punishment lies in his own act, that he is specially honored. The particular will that is only the particular will is an offence to the universal; and must be sublated through its own very self into the universal again, with restoration of the pristine, rational, and absolute unity.

Now, in the relation of crime and penalty, the edge of *internality* appears. The observance of law, namely, may, in many respects, be observance only — an external and mechanical mode of conduct in certain references, without a thought further than the required externality; but this externality becomes *deepened*, becomes reflected inwards, becomes internalized into inner ideal principles of right and wrong, in the relation of crime and its consequences. This is the more apparent when we contrast physical necessity with moral freedom. Only because the sun, the planet, the rock, the river, the sea, the clod, the plant, the animal, cannot depart from the prescripts of its universal, is it bound, is it under necessity, and incapable of imputation; whereas it is only because the human being *can* contradict and oppose, and set himself against HIS universal, that he is free and within reach of imputation. It is in the relation of crime and its consequences, then, that the majesty of the universal will, which is one's true will, and the nullity of the particular will, which is only one's false will, appear and manifest themselves: and in this way *Right* passes into—*Morality.*

The rights which we have just considered are often named natural rights. There is involved here an essential and fundamental mistake, however. In a state of nature, that is, there are *no* rights—in a state of nature there are only the *un-*

rights of cunning and of strength. Only in the civil community is it that there are really rights, and these are such as we have just seen sketched in reference to the relations of Property, Contract, and Penalty. The sketch has been slight, but I trust it has not been altogether without true traits. I trust that you understand, also, that it has been limited to Right as Right, and that the Moral and Political sections of the book we have had always in view have only been incidentally alluded to.

I have said that for these lectures I had the advantage of the examination of a considerable number of authorities kindly lent me for the purpose; and that the result was to establish my confidence in the exposition of Hegel as regards depth and truth of insight. The consideration now of an objection or two will enable me, by the addition of a word on these authorities, to bring these lectures fittingly to a close.

Röder accuses the Hegelian exposition of "formalism," and of all nations praises the Italian for this, that it has "fortunately let the Hegelian goblet pass by." As regards "formalism," there is a certain *outside* show of reason, for the Notion *may* be considered something merely artificial; but as regards the Italians it is Röder who is "unfortunate," for in no part of the world at this moment is Hegelianism more in the ascendant than precisely in Italy: whether at Florence, or at Naples, or even at Rome, under Spaventa, and Mariano, and Vera, it is Hegelianism that, as philosophy, is taught. When Röder further, then, accuses Hegel and his disciples of "obscuring," "degrading," "distorting," "disfiguring," "caricaturing" "the simplest truths of Rights and Politics," "on the rack of an equally clumsy and unintelligible method," by the "trickery" of a new "scholasticism," &c., we have good grounds to suspect him of incorrectness, at the same time that we see *internal* ignorance to be the condition of the *show of truth* that applies to the *outside*. Röder, for the rest, though writing clearly and with much detail, is all too plainly wholly under the power of the biassed and subjective Pantheism of his master, Krause. Trendelenburg's is a good book, and by a very able man; but, though there is latently to be understood disagreement with Hegel, it is the spirit of Hegel that is the valuable element in it. This spirit,

too, is what informs the work of Michelet, at the same time that he must be pronounced largely original, and valuably so, especially in historical references. What Hildenbrand gives us is a *history* of the notions of Right, and not—at least as yet—a system. As a history, it is most excellent. In all German historical writers on philosophical matters now, there is a single common story, especially ie reference to the ancients; but it must be acknowledged that Hildenbrand, for his part, tells this story with perfect elegance and ease, and with the most careful accuracy. I come now to Lassalle, who is a writer at once of original power and great importance. In recent philosophy there are few works of greater mark than his work on Heraclitus the Dark. His work on the Erbrecht also gains more attention daily. But Lassalle is an Hegelian, and he glories in the name. Nevertheless, he has an objection to the *Rechtsphilosophie* of Hegel. This objection I believe to be a mistake, but, as it concerns the one pressing question of the day, I shall state it. It concerns, namely, the question of acquired rights of property, and Lassalle looks upon the ideas of liberalism, of the *bourgeoisie*, of what we know as the passive political economy of the middle classes, represented by Mr. Mill, say, as at once narrow and erroneous in regard to it. He surely is not wrong in believing this question to contain the "politico-social thought that underlies our epoch," what "forms the inmost ground of our political and social struggles" now. This it is, he says, that "thrills the world's heart at present"; and "the mere necessity just to refer to this only shows in what soulless platitude and superficiality political principles are understood by the spokesmen of the liberal bourgeoisie." "The isolatedness," he continues, "in which the liberal bourgeoisie places politics—it is that which characterizes its stand-point and its mental horizon, and conditions its performances. It is this isolatedness which gives at the same time to its political diatribes their astonishingly philistine color," . . . . "a dead isolatedness in which the soul has resigned its life and its vision, to lose itself in mere words, and with words, on words, for words, to battle." He would oppose to this world-cultus substantial thought, and he points out the necessity of reconsideration scientifically of

many particulars in the science of Right in order to attain to a scientific theory of acquired rights. He says, "It is now more than forty years since Hegel published his first edition of his Philosophy of Right," and remarks that this work, *from its historical conditions*, could only be a first attempt to exhibit right as a rational organism, and censures his disciples for not having regarded it as a mere logical foundation on which it was theirs to build further. He regards, with Hegel, the scientific evolution of will as alone capable of yielding a philosophy of Right; Hegelianism is to him the "quintessence of all Wissenschaftlichkeit," and Hegel's ground-principles and method will, he believes, always remain. But the principles of Right are, as he also believes, *no stereotyped logical category:* they are substantial ideas that historically change and historically progress. Hegel himself did not, he thinks, sufficiently see this, otherwise he would have treated Law as he treated Religion, and would have demonstrated it in evolution through various historical stages. It is but Hegel himself, then, that must be used here to correct Hegel. Indeed "Hegel himself and his philosophy bear none of the blame here" is his slightly self-contradictory further avowal; "on every page of his works Hegel is never tired of making it prominent that philosophy is identical with the totality of empiricism, that philosophy stands in greater need of nothing than of penetration into the empirical sciences; reconciliation of *natural* and *positive* right, that was Hegel's object," but his disciples have neglected to carry it out into actual realization in the empirical or historical matter of law. In short, Lassalle would have Positive Law regarded as consisting of but successive historical transformations of natural law, and he proceeds with great eloquence and fulness to illustrate this idea, with special reference to property.

The progress of law, he remarks, is towards limitation of the individual's right to private property—towards the liberation of objects from individual dominion. We see this in the abrogation of *Fidei Commissa* even, though so much is this mistaken that it is generally regarded as an increase of the liberty of property—a removal of its restrictions. This abrogation, namely, lessens the power of a proprietor over his own property. The same is the case with the "free com-

petition" of the present day. That, too, is vaunted as a giving freedom to the right of property, whereas it is rather a restricting of the power of the private proprietor; for the thought in it is, there shall be no more monopoly, no longer any privileged individuals. The private property, then, that was once possible is now impossible.

Man — Lassalle substantially continues — at first like the infant, stretches out his hands to everything — would make all his — recognizes no limits to his self-will. The fetich-worshipper breaks his idol when his desires are crossed, and thus treats his very gods as his property. Long after the rescue of these from such position, man himself continues to constitute to man an article of property. The conqueror regarded the life of the conquered as his; and slavery, at first unconditioned, then conditioned, has only in our own day been abrogated. Formerly one's wife was property, and could be bought and sold. Formerly one's children and one's debtors were so completely in the same category that the former might be put to death by us and the latter taken as slaves. In like manner, the power of disinheritance was but a fuller right of private property, while subsequent legislation has been all in restriction of it. So the slave rises into the serf, the serf from privilege to privilege into full emancipation. Here even the *jus primæ noctis* is a restriction of property; the seigneur compounds for his right to the very life of the slave by accepting her virginity. The middle ages, though freed from slavery proper, are the very time when the human will can, in all its three moments, be set as private property. Public will is then an object of such property on many grades, and this he illustrates by the privilege of sovereigns and other feudal superiors to arrogate a property in everything, air and water, and things public, things religious, &c. As for particular will being in similar relations, monopolies, and guilds, &c., are referred to; and as regards individual will in the middle ages, lastly, we are reminded of villenage, and of such rights even over the personally free as the choice by the feudal lord of a husband for his female vassal. The French Revolution Lassalle conceives to have been the sublation of said private property, and in all its three moments. As regards the present, it is incorrect, he

says, to call this the age of individualism, and individualism the character of liberalism. Liberalism is particularism (as we may say), classism: it wants freedom, that is, not for the individual, but for the tax-paying, capital-holding particular, and that is a class. This is but a remnant of the middle ages, Lassalle believes, and must disappear. The social question now, he intimates in conclusion, is: whether, in these days, when there is no longer property *immediately* in another human being, such may exist *mediately;* and he proceeds to describe the relative positions of capital and labor as we must daily witness them. It cannot be denied, then, that Lassalle regards the historical progress as *e mancipio*—emancipation—that is, a release from private property; and that such release is equivalent to the positive realization of human liberty. Neither can we well doubt that there is much in what he says highly worthy of our very closest attention (it is curious that we should have here in Edinburgh so recent and striking an example of a portion of his doctrine in the changes we have seen effected on the Merchant Schools); still, what concerns us here is mainly the alleged correction of a defect in Hegel. And, so far as adhesion to the right of private property is a defect, Hegel must be pronounced guilty of that defect. Hegel undoubtedly signalizes the advantages—the necessity of the institution of private property. Still, it is to be borne in mind that it is the State that is to Hegel paramount—that to him the State is there with power to sist any contingent unreason of the lower spheres—that the State has a *Machtspruch* over all, and a perfect right of negation. This is manifest in almost every page he writes. Evidently, then, if Hegel, is averse to the one extreme, the individualism of such men as Lassalle and Fichte, he is equally averse to the other extreme, the superficial pedantry of those spurious, *passive*, political economists, who believe their laws to be laws of nature, not reason, that need only be allowed to work on like gravitation or a waterfall; and who look forward to that day of light, at length, when we shall parson, and doctor, and lawyer ourselves; and when the whole earth will be inhabited only by a single rational commuuity of exchanging animals, with nothing but the buttons of the policeman to clear up

and shine away any foggy nodus of misunderstanding that may arise. That I take to be Hegel's position—a position, then, as it seems to me, that corrects the very correction Lassalle would offer it. It is not correct either to accuse Hegel's *Rechtsphilosophie* of being independent of history, or of dealing only in stereotyped categories, like those of Logic and Nature. The *Rechtsphilosophie* itself contains many references to history, and the whole "Philosophy of History" may be regarded as *just such reference* by itself and at full. Right, besides, is not Religion, as little as Religion is Art: the *Rechtsphilosophie*, and the *Religionsphilosophie*, and the *Æsthetik*, must be allowed to prescribe themselves each its own specific character. Neither can it be said that in Hegel's philosophy of law, Hegel would have all regarded as fixed and stereotyped—a *Seyn*, and not a *Werden*, a Being, and not a Becoming. Hegel, on the contrary, is so convinced of the truth of an historical Becoming that he does not regard *Logic* itself as fixed—in the sense, that is, of the impossibility of new categories. He will be found saying that all revolutions in science, no less than in history, depend on this, that man has changed his categories, and preciser proofs to the same effect might be readily adduced.

It is in place now to refer to Austin, and the remarkable contrast his opinions exhibit to those of Lassalle and Hegel. Of the public good, this writer speaks thus: "When I speak of the public good, or of the general good, I mean *the aggregate enjoyments* of the single or individual persons who compose that public or general to which my attention is directed. The good of mankind is *the aggregate of the pleasures* which are respectively enjoyed by the individuals who constitute the human race. The good of England is the aggregate of the pleasures which fall to the lot of Englishmen, considered individually or singly." This, you will observe, is the very voice of the modern English spurious *enlightenment*. According to it, what is, is but the various motely individuals, and no *universal* exists, but only a motely aggregate; while *good*, again, is only *enjoyment—pleasure*. These are doctrines that know nothing of morals, nothing of the State, and nothing of the law: these are doctrines that, carried into effect, would, almost in an instant, scatter the race into an

incoherent atomism of unconnected and irresposible single savages. This really is the only word they deserve; yet in his peculiar *Wahn*, so sure is their author of the truth of them, that he says, "When it is stated strictly and nakedly, this truth is so plain and palpable that the statement is almost laughable." He ought to have said, not almost, but quite laughable, though for a very different reason. This he does not say, however; but continues, this "truism is unknown in that notion of the public good which was current in the ancient republics." "Agreeably to that notion of the public good, the happiness of the individual citizen is sacrificed without scruple, in order that the common weal may wax and prosper; the only substantial interests are the victims of a barren abstraction, of a sounding but empty phrase." The state of Mr. Austin's knowledge, as regards all that constitutes the philosophy of history, is so plain here that it is useless to point out more than the *dependence* of the individual on that universal — on that common stock which is his *substance*, and apart from which he is is little better than the gorilla our so enlightened modern science would make of him.

As regards the laboring classes, Mr. Austin speaks thus:— "It is certainly to be wished that their reward were greater, and that they were relieved from the incessant drudgery to which they are now condemned. But the condition of the working-people (whether their wages shall be high or low, their labor moderate or extreme), depends upon their own will, and not upon the will of the rich. *In the true principle of population*, detected by the sagacity of Mr. Malthus, they must look for the cause and the remedy of their penury and excessive toil. There they may find the means which would give them comparative affluence; which would give them the degree of leisure necessary to knowledge and refinement; which would raise them to personal dignity and political influence, from grovelling and sordid subjection to the arbitrary rule of the few." The rule of the few is arbitrary and bad, then, to Mr. Austin; but if only the working-classes would refrain from making children we should have a heaven on earth! This, with education, is Mr. Austin's panacea. Mr. Austin is, in many respects, a very worthy gentleman;

but it is his own wife (an admirable an amiable lady) who tells us that "the experience of the thirty years which have elapsed since the foregoing lecture was written, does not seem to justify the author's sanguine anticipations." I should like to read you several other extracts here which naively confute the doctrines involved by the wholly innocent but unthinking propos of a disciple who has got by heart only; but I must refrain from want of space. I was prepared also to give some consideration of Mr. Austin's views of Utility, as well as to discuss, at some length, his ideas of the principles of law; but I must now deny myself in these references also. If any gentleman, however, will consider that a command *as such* is to Mr. Austin the essence of law and morals, as well as in *what* he places this command to give it *meaning*, *source*, reason, and *authority*, he will be able to form some conception of what I might finally say of him. Mr. Austin, in short, is one of those finical, over-refined, almost female minds, that, without power in themselves, attach themselves blindly to the guidance of another or others; and his book is a work of infinite external verbal distinction, but it has not a vestige of internal thinking rationale. Heron's book is, to my mind, a book much more useful to the *student*, though it is very much of a *pêle-mêle*, undigested compilation. Here, too, I have to suppress much.

I have now to conclude these lectures by sincerely thanking you for the very kind and generous attention with which you have assisted me in a very dubious and difficult undertaking.

CONDITIONS OF IMMORTALITY

ACCORDING TO ARISTOTLE.

By Thos. Davidson.

As a proof of the soul's immortality it has been frequently urged that all peoples, in all times and under all circumstances, have believed it. Though the allegement is not strictly true, as has been shown by recent researches, it is nevertheless near enough to the truth to form a presumption in favor